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HICKS' PERSONAL REPRESENTATIVE *v.* ROMANE.

June 11, 1914.

[82 S. E. 71.]

1. Death (§ 76*)—Action for Negligent Death—Burden of Proof.—In an action for the death of one through the negligence of another, plaintiff must, in the absence of direct evidence, show such circumstances as will justify the inference that the death was due to the wrongful act of defendant, and exclude the idea that it was due to a cause with which defendant was unconnected, and not leave the question to mere conjecture.

[Ed. Note.—For other cases, see Death, Cent. Dig. § 94; Dec. Dig. § 76.* 4 Va.-W. Va. Enc. Dig. 256.]

2. Highways (§ 184*)—Negligence—Death of Pedestrian—Evidence—Sufficiency.—In an action for the death of a pedestrian on a highway struck by an automobile, evidence held not to justify a finding that defendant's automobile struck decedent.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 471-474; Dec. Dig. § 184.* 4 Va.-W. Va. Enc. Dig. 257.]

3. Death (§ 75*) — Action for Death — Evidence — Sufficiency.—Where, in an action for death, the facts relied on for a recovery are equally consistent with a theory relieving defendant from liability the facts do not justify a recovery.

[Ed. Note.—For other cases, see Death, Cent. Dig. §§ 93, 95; Dec. Dig. § 75.* 4 Va.-W. Va. Enc. Dig. 257.]

4. Death (§ 76*)—Action for Death—Evidence—Sufficiency.—In an action for the alleged negligent killing of decedent by defendant while operating an automobile on a public highway, evidence held not to justify a finding that decedent was killed by an automobile, but that decedent might have met with foul play before the automobile passed the place where decedent was found.

[Ed. Note.—For other cases, see Death, Cent. Dig. § 94; Dec. Dig. § 76.* 4 Va.-W. Va. Enc. Dig. 257.]

5. Trial (§ 156*)—Evidence—Demurrer—Admissions.—A defendant, by demurring to plaintiff's evidence, admits the truth of the evidence and of all inferences which can be properly drawn therefrom by a jury, but he does not admit any fact not proved by evidence nor any forced deductions from the evidence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 524.]

6. New Trial (§ 108*)—Newly Discovered Evidence—Sufficiency.—A new trial on the ground of newly discovered evidence is properly denied, where the testimony of the newly discovered witness will con-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tradict in part the testimony of a witness relied on at the trial, and will leave the issue in greater doubt than it was at the end of the trial.

[Ed. Note.—For other cases, see *New Trial*, Cent. Dig. §§ 226, 227; Dec. Dig. § 108.* 10 Va.-W. Va. Enc. Dig. 447.]

Error to Circuit Court, Chesterfield County.

Action by W. Plummer Hicks' personal representative against Charles Romaine. There was a judgment for defendant, and plaintiff brings error. Affirmed.

C. R. Sands, of Richmond, and *J. M. Gregory*, for plaintiff in error.

Will & Willcox, of Petersburg, for defendant in error.

RAGSDALE *v.* CITY OF DANVILLE.

June 11, 1914.

[82 S. E. 77.]

1. Jury (§ 22*)—Jury Trial—Right to.—Danville City Charter, c. 5, § 7, declaring that no appeal may be taken from the judgment of the mayor in imposing penalties for violation of the city ordinances, where the fine does not exceed \$10, is not in violation of Const. art. 1, § 8 (Code 1904, p. ccix), declaring that no man shall be deprived of his liberty, except by judgment of his peers, as depriving one convicted of violating such an ordinance of a jury trial on appeal, for minor offenses, punishable generally by small fines, are not regarded as crimes and misdemeanors within the constitutional provisions guarantying jury trial in criminal prosecutions.

[Ed. Note.—For other cases, see *Jury*, Cent. Dig. §§ 145-151; Dec. Dig. § 22.* 9 Va.-W. Va. Enc. Dig. 15.]

2. Municipal Corporations (§ 642*)—Appeals from Judgment of Mayor.—An appeal from the judgment of the mayor of a municipality, imposing a penalty for a violation of a vaccination ordinance, must, under the direct provisions of Code 1904, § 2956, be taken to the corporation court of the city, where the validity of the ordinance was not attacked; the circuit court having cognizance of such appeals only when the constitutionality or validity of an ordinance or by-law of the corporation is questioned.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1412-1415; Dec. Dig. § 642.* 10 Va.-W. Va. Enc. Dig. 248.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.